

Written Submission from DairyNZ Limited on Freshwater Planning Instrument Parts of Proposed Otago Regional Policy Statement 2021

To: Otago Regional Council

- 1. Name of submitter** (full name of person/persons or organisation making the submission. Note: The submissions will be referred to by the name of the submitter)

DairyNZ Limited

- 2.** This is a submission on the Freshwater Planning Instrument Parts of Proposed Otago Regional Policy Statement 2021.
- 3.** I **could not** (*Select one*) gain an advantage in trade competition through this submission. (*See notes to person making submission*)
- 4.** I **am** (*Select one*) directly affected by an effect of the subject matter of the submission that
 - a.** adversely affects the environment; and
 - b.** does not relate to trade competition or the effects of trade competition (*See notes to person making submission*)
- 5.** I **wish** (*Select one*) to be heard in support of my submission
- 6.** If others make a similar submission, I **will** (*Select one*) consider presenting a joint case with them at a hearing
- 7.** Submitter Details
 - a.** **Signature of submitter** (or person authorised to sign on behalf of submitter)

- b.** **Signatory name, position, and organisation** (if signatory is acting on behalf of a submitter organisation or group referred to at Point 1 above)

Name: Dr David Burger

Position: General Manager Sustainable Dairy

Organisation: DairyNZ Limited

c. Date

29/11/2022

Address for service of submitter (This is where all correspondence will be directed)

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8. My submission is:

DairyNZ seek the relief on provisions specified in the attached table, for the reasons provided in relation to each submission point. We also make the following, general, submission on key issues and seek further changes related to those issues, as outlined in the Summary of decisions sought.

Introduction

DairyNZ is the industry good organisation representing New Zealand's dairy farmers. Funded by a levy on milk-solids and through government investment, we support farmers through investing in research, resource development, extension, and advocacy to ensure they lead the world in sustainable dairy farming.

DairyNZ welcomes the opportunity to submit on the Otago Regional Council's Proposed Regional Policy Statement (pORPS).

High-court decision

The decision of the High Court¹ meant that the parts of the proposed Otago Regional Policy Statement (pORPS) directly relating to freshwater had to be identified and re-notified as a freshwater planning instrument. DairyNZ acknowledges the difficulties with separating out freshwater provisions in a RPS with interlinked provisions and many relationships between provisions relating to land-based activities and freshwater. We agree with the identification made by ORC, and the parts identified as freshwater provisions but consider the selection in some instances to be unnecessarily narrow. Some terminology used in the freshwater provisions require a definition and in some instances this definition has not been identified as a freshwater provision. This is the case for the definition of *Te Mana o Te Wai* and *wetland* for example, where a definition is crucial for understanding and interpreting the associated provisions.

DairyNZ has endeavoured to stay within the limits of the identified freshwater provisions for our submission but the gap, as we see it, in this identification might mean that some feedback strays beyond.

It goes without saying that the High Court decision has added complexity and delay to the ORPS submission and hearing process and because of this, an increased cost to all parties involved.

Section 32 report evaluation of provisions

Significant Resource Management issues for the region

The s.32 report gives an overview of the community consultations held from January to March 2020 with the aim of confirming the relevance of nine key issues, identifying further issues, and solutions. It is not clear the weight ORC has given to these consultation events, and how much they and further consultation events have influenced the development of the pORPS. The issues listed in the s.32 report under heading 2.2.1 (36) are however, almost identical to the issues in the "Significant resource

¹ Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Incorporated [2022] NZHC 1777.

management issues for the region” (SRMR) chapter. The issues underpin and influence the whole RPS, and the need for objectives and policies to address the issues. It is imperative to get these right, and they should in our view, be informed by a solid science based overview. Quality Planning states: *Issues need to be derived from evidence and facts, and those concerning values (such as amenity): by consultation. Potential issues should be tested to see if they need to be included in, and managed through, the plan.*

It is mentioned in the s.32 report, that nine of the issues were developed at a workshop with Councillors and two key issues were added after the consultation events, i.e. included after feedback from the community. Although DairyNZ supports the use of community consultation to inform regional plans in general, we also understand the difficulties ORC must have faced running these events in the midst of a pandemic. Appropriate community consultation is contingent on accessibility to both the information required to inform good feedback (particularly science, economics and policy, and tangata whenua views) and accessibility to the engagement process itself. It is our view that the ability for communities to access information and understand issues and options will have been severely hampered by the Covid-19 pandemic restrictions. ORC’s analysis of engagement feedback should take these restrictions into consideration by placing greater emphasis on testing this feedback with evidence and facts, but the extent to which this has been done is unclear.

The significant issues identified might very well be true for part or all of the Otago region, but the extent is unknown. They are most likely relevant for some areas, even though that might be on a very local scale. If that is the case, they should not influence the direction of the ORPS.

The issues are clearly based on a theme of resource use having a negative impact on the environment. It is our view that resource use, and farming in particular, also contributes in a positive sense to many aspects of the community and the landscape in which they operate. This has not been reflected or described properly in the SRMR chapter, nor evaluated in the s.32 report, nor reflected in the specific provisions under consultation.

Giving effect to Te Mana o Te Wai

Te Mana o te Wai has been incorporated as a concept in the NPS-FM since 2014. The NPS-FM 2020 elevates Te Mana o Te Wai to a fundamental concept, at the centre of the management of freshwater, stating at (1.3(1)):

Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.

Since the pORPS will be, to our knowledge, the first RPS to go through a hearing, it will be important to discuss and test how the concept of TMOTW can be given effect to through objectives and policies in a plan, and still fulfil the requirements of how to write provisions. This is in our view, not a straightforward exercise. For example, the concept as expressed in the NPS-FM (copied above) prioritises the health and well being of the waterbody, rather than the mauri of the waterbody, which is in our view, an important distinction and affects the wording of LF-WAI-O1.

Recent guidance from the Ministry of the Environment provides useful direction as to how TMOTW should be implemented:

Understanding what the holistic health and well-being of a water body means, and how to express it, will come from conversations with tangata whenua when gaining a local understanding of Te Mana o te Wai.... One way to ensure the health and well-being of water bodies is by applying the NOF².

DairyNZ considers that the local understanding of TMOTW is a crucial first step in understanding how to give effect to TMOTW in Otago and considers that this should have been described more thoroughly in the s.32 report or in separate documentation. We consider that ORC has a role to facilitate the understanding of the concept of TMOTW for farmers as it relates to their farm, and to ensure farmers can pick this plan up and understand what it means for them. The pORPS does not meet this test.

The s.32 report outlines the involvement of iwi in the development of the pORPS and specifically describes the importance of objective LF-WAI-O1 and how that is implemented mainly through policy P1 to P3 (LF-WAI) and methods in the same chapter. Of the four policies in the WAI chapter, only policy LF-WAI-P1 has been identified as being a freshwater provision. We consider that the chapter should be assessed as a whole, as to whether the pORPS is giving effect to the concept of Te Mana o Te Wai (TMOTW) or not. This cannot be done by only identifying the objective and one policy as freshwater provisions.

We question how the conclusion at para 114 (s.32 report) has been reached, and don't think the assessment is sufficient to underpin the conclusion. It might very well be that the objective (LF-WAI-O1) is the most appropriate way to achieve the purpose of the Act, but there is a lack in the evaluation to fully understand this. DairyNZ considers that the s.32 report should more thoroughly test different options to evaluate which is the most appropriate one to give effect to TMOTW.

² MfE. Guidance on the National Objectives Framework of the National Policy Statement for Freshwater Management 2020.

Assessment of economic and social cost

We agree with the conclusion in the s.32 report (para 113) that giving effect to TMOTW will mean a *paradigm shift for water management in Otago and will result in significant economic and social costs due to the changes in land and water uses that will be required*. However, the economic and social costs as a result of implementing the pORPS is largely unknown, it has not been quantified in the s.32 report.

There needs to be a clearer understanding of what those costs are and how this paradigm shift will influence dairy farmers and the wider community. A clearer understanding of the economic and social impact of the objectives and policies will also help the community to make informed decisions about what they would like freshwater to look like in the future. To facilitate this shift, there also needs to be a clear transition pathway to a planning framework that gives effect to TMOTW. We consider that this should be added into the pORPS.

The long-term visions set out timeframes for when the visions should be achieved. According to the NPS-FM 2020, the timeframes should be both “ambitious and reasonable”. It is our view that the assessment must consider the level of change in water quality and quantity that will be needed to achieve the visions and that this is difficult to do without a quantification. Ideally, the NOF process should inform the assessment and setting of the timeframes, but other approaches are possible. We consider that the evaluation in the s.32 report doesn’t adequately assess the timeframes and if they are both ambitious and reasonable. This should be strengthened to inform the long-term visions.

Summary of decisions sought

DairyNZ seeks the following decisions from Otago Regional Council:

Changes to provisions as specified in the attached table.

Further strengthening of the s.32 report and evaluation of options and their social, and economic cost.

Clarifying to what extent evidence and facts have underpinned the identifications of significant resource management issues in the region.

Strengthening of the assessment of the long-term visions and whether the timeframes are both “ambitious and reasonable”.

Additions of a transition framework (an objective and policy) recognising the importance of primary production to the Otago region and the support that will be put in place to transition farming practices into a planning framework that gives effect to TMOTW. This would give effect to the purpose of the RMA (s.5) and the third priority in the hierarchy of obligations, and align with the enabling policy 15 in the NPS-FM 2020.

Column 1	Column 2	Column 3	Column 4
The specific provisions of the proposal that my submission relates to are:	I support or oppose the specific provisions or wish to have them amended .	<i>The reasons for my views are:</i>	I seek the following decision from the local authority:
Interpretation Definitions of Certified freshwater farm plan Drinking water National Objectives Framework Natural Hazard works Other infrastructure Over-allocation Specified infrastructure Specified rivers and lakes	Support	The definitions of all of the terms have the same meaning as definitions already adopted in other legal instruments such as the RMA or the National Planning Standards 2019. DairyNZ agrees with this approach.	We seek that the definitions remain as proposed.

Wetland utility structure			
<p>SRMR</p> <p>SRMR–15</p> <p>SRMR–16</p> <p>SRMR–19</p>	Amend	<p>Our concerns with the SRMR chapter have been outlined in the general section.</p> <p>In addition, gaps in knowledge should be reflected in other parts of the pORPS with an attempt to fill those gaps with improved monitoring or through outlining an approach in methods. This has not been done in any of the provisions identified as being freshwater provisions.</p> <p>SRMR-16</p> <p>Delete the following sentence since there is, to our knowledge, no evidence that supports this statement. The current national regulation for intensive winter grazing has put a hold on further expansion of intensive winter grazing.</p>	<p>Amend the issues to include both negative and positive aspects of resource use in the Impact snapshots, including the important, positive contribution of primary industries to the Otago economy and the importance of reliable access to water for primary production.</p> <p>Address identified knowledge gaps in methods and monitoring.</p> <p>SRMR-16</p> <p>The growing practice of wintering cattle in Otago can exacerbate leaching effects, which may not connect to surface water until spring, creating spikes in nutrient loads.</p>

RMIA-WAI RMIA-WAI-I1	Oppose	Content overlaps with I3 and would suit better to be added into I3, rather than to be kept as its own issue.	Incorporate part of content into RMIA-WAI-I3 and delete I1.
RMIA-WAI-I3	Amend	See explanation for I1.	Part of I1 can be added to this description of issues.
LF-WAI LF-WAI-O1 – Te Mana o te Wai	Amend	<p>DairyNZ recognises the fundamental importance of reflecting mana whenua values and addressing issues identified by mana whenua through the pRPS. The pRPS plays a critical role in clarifying this fundamental concept in the Otago context, so that plan users can understand how mana whenua aspirations for Te Mana o te Wai can be understood. This is in our view, a vital first step.</p> <p>It is our understanding that this objective is seeking to provide that interpretation but, in our view, the objective is too vague and unspecific. Terms such as mauri do not have broadly understood meaning and are used inconsistently throughout the plan. We do</p>	<p>Amend LF-WAI-01 as follows:</p> <p>The mauri of <u>The health and well-being of</u> Otago’s water bodies and their health and well-being is are protected, and restored where it is degraded, and the management of land and water recognises and reflects that:</p> <p>(1) water is the foundation and source of all life – na te wai ko te hauora o ngā mea katoa,</p> <p>(2) there is an integral kinship relationship between water and Kāi Tahu whānui, and this relationship endures through time, <u>connecting the past, present and future,</u></p> <p>(3) each water body has a unique whakapapa and characteristics,</p> <p>(4) water and land have a connectedness that supports and perpetuates life, and</p>

		not consider it appropriate to use the mauri of water as a measure of achievement: it is difficult to assess whether it is met or not, and it is not defined in the pORPS. DairyNZ seeks amendments to this objective, to provide greater clarity for plan users.	(5) Kāi Tahu exercise rakatirataka, manaakitaka and their kaitiakitaka duty of care and attention over wai and all the life it supports.
LF-WAI-P1 – Prioritisation	Amend	This policy introduces terms that are not widely understood, and as such the policy does not provide the necessary clarity required to give effect to Te Mana o Te Wai. The hierarchy of obligations are already articulated in the NPS-FM 2020, and alignment with that wording can avoid differences in interpretation.	Amend the policy as follows: In all management of fresh water in Otago, prioritise: (1) first, the health and well-being of water bodies and freshwater ecosystems, te hauora o te wai and te hauora o te taiao, and the exercise of mana whenua to uphold these, (2) second, the health and well-being needs of people, te hauora o te tangata; interacting with water through ingestion (such as drinking water) and consuming harvested resources) and immersive activities (such as harvesting resources and bathing), and

			(3) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
LF-WAI-PR1 – Principal reasons – Paragraph 1	Amend	The principal reason doesn't properly reflect the concept of TMOTW as outlined in the NPS-FM 2020, and runs the risk of creating confusion.	<p>Amend the principal reason as follows:</p> <p>In accordance with the NPSFM, councils are required to implement a framework for managing freshwater that gives effect to Te Mana o te Wai. This places the mauri (life force) of the water at the forefront of decision making, recognising te hauora o te wai (the health of the water) is the first priority, at the forefront of decision-making so that it may and supports te hauora o te taiao (support the health of the environment) and te hauora o te takata (the health of the people). It is only after the health of the water is sustained that water can be used for economic purposes. Giving effect to Te Mana o te Wai requires actively involving takata whenua in freshwater planning and management.</p>

LF-WAI-AER2	Amend	The anticipated environmental outcome should reflect the outcome sought by the objectives and policies.	<p>Amend the wording as follows:</p> <p>The mauri of Otago’s water bodies and their health and well-being is protected.</p> <p>Other consequential changes might be needed depending on changes to LF-WAI-O1 – Te Mana o te Wai.</p>
<p>LF-VM- Visions and management</p> <p>LF-VM O2-O6</p>	Oppose	<p>It is not possible to assess if the identified timeframes are both ambitious and reasonable.</p> <p>DairyNZ don’t support setting a general timeframe without knowing the level of reductions needed and the requirements for dairy farmers to make changes to their farming practices. We also consider that setting of timeframes should be informed by an assessment of social and economic impact on the farming community.</p> <p>Until the development of the new Land and Water plan has progressed further it is not possible to fully assess the time needed for</p>	<p>Amend the timeframes in LF-VM O2-O6 based on a more thorough understanding of the implications, economic and social cost, on the community from meeting the long-term visions. As a starting point, a 50-year timeframe should be considered in FMUs where the visions will be more challenging to achieve.</p>

		dairy farmers to make changes and adjust to meet the long-term visions.	
LF-VM-P5 – Freshwater Management Units (FMUs) and rohe LF-VM-P6 – Relationship between FMUs and rohe	Support	DairyNZ supports the outline of FMUs and rohe and how the relationship between rohe and FMU provisions will be managed.	We seek these policies to be retained as they are.
LF-VM-E2 – Explanation	Support	It sets out a logical approach to managing rohe and FMU provisions.	We seek the explanation to be retained as it is.
LF-VM-Fresh water LF-FW-O8 – Fresh water	Amend	DairyNZ considers that there is a need to include reference in clause 1, to the ability of people and communities to provide for their social, economic and cultural wellbeing to better reflect the purpose of the RMA (s.5). There is also a need to amend (2) to either completely deleted the clause or add words to reflect that in some places surface water flow naturally disconnects. A continuous	Amend Clause 1 and 2 as follows: In Otago’s water bodies and their catchments: (1) the health of the wai supports the health of the people and thriving mahika kai, <u>and the ability of people and communities to provide for their social, economic and cultural wellbeing, now and in the future,</u> (2) water flow is continuous throughout the whole system,

		flow it is not always hydrologically possible or representative of the range of waterbodies within a system particularly where that includes ephemeral and intermittent waterways.	<i>or</i> , add words that recognise that a continuous flow is not always part of a natural system.
LF-FW-O9 – Natural wetlands	Amend	DairyNZ consider that the objective should better reflect the need to restore a wetland if degraded. This would create a better alignment with the NPS-FM 2020.	Amend as follows: Otago’s natural wetlands are protected, or restored <u>if degraded</u> so that: (1) mahika kai and other mana whenua values are sustained and enhanced now and for future generations,
LF-FW-P7 – Fresh water	Amend	Align with NPS-FM 2020, appendix 3.	Amend as follows: (3) specified rivers and lakes are suitable for primary contact within the following timeframes: (a) by 2030, 90 <u>80</u> % of rivers and 98 <u>98</u> % of lakes, and (b) by 2040, 95 <u>90</u> % of rivers and 100 <u>100</u> % of lakes, and
LF-FW-P10 – Restoring natural wetlands	Amend	The term ecosystem health as described in the NPS-FM 2020 (Appendix 1A), includes	Amend as follows: LF-FW-P10 – Restoring natural wetlands

		<p>the management of five biophysical components: water quality and quantity, habitat, aquatic life and ecological processes. It is unclear why the policy needs to duplicate this.</p> <p>We also seek that reference to “lost wetlands” be deleted. It will not always be appropriate to restore lost wetlands, and this would require a more nuanced policy approach.</p> <p>The exclusion of stock is already regulated in the Stock exclusion regulations³, and doesn’t require a duplication in this policy.</p>	<p>Improve the ecosystem health, <u>and</u> hydrological functioning, water quality and extent of natural wetlands that have been degraded or lost by requiring, where possible:</p> <p>(1) an increase in the extent and quality of habitat for indigenous species,</p> <p>(2) the restoration of hydrological processes,</p> <p>(3) control of pest species and vegetation clearance, and</p> <p>(4) the exclusion of stock.</p>
LF-FW-M8 – Action plans	Oppose	This is already included as a requirement in the NPS-FM 2020. There is no need to repeat this.	We seek that LF-FW-M8 is deleted.
LF-FW-E3 – Explanation (paragraph 2 and paragraph 5)	Amend	Consequential amendments to give effect to the relief sought in relation to policies P7 and P10.	Amend as follows: While the NPSFM requires promotion of the restoration of natural inland wetlands, the

³ Resource Management (Stock Exclusion) Regulations 2020

			<p>policies in this section take a stronger stance, requiring improvement where natural wetlands have been degraded or lost. This is because of the importance of restoration to Kāi Tahu and in recognition of the historic loss of wetlands in Otago.</p>
LF-FW-AER11	Amend	<p>We consider using the term 'extent or values' as per the NPS-FM rather than 'extent or quality' is more appropriate, given natural variances can occur within wetlands.</p>	<p>Amend as follows:</p> <p>There is no reduction in the extent or quality <u>values</u> of Otago's natural wetlands.</p>
<p>LF-LS-Land and soil</p> <p>LF-LS-P18 – Soil erosion</p>	Amend	<p>DairyNZ supports practices that retains soil since this is an asset for farmers. However, it might be difficult to assess whether a management practice is effective or not, and new, innovative, practices should be able to be tested. We propose to delete the word effective.</p>	<p>Amend the policy as follows:</p> <p>Minimise soil erosion, and the associated risk of sedimentation in water bodies, resulting from land use activities by:</p> <p>(1) implementing effective management practices to retain topsoil in-situ and minimise the potential for soil to be discharged to water bodies, including by controlling the timing, duration, scale and location of soil exposure,</p>

			<p>(2) maintaining vegetative cover on erosion-prone land, and</p> <p>(3) promoting activities that enhance soil retention.</p>
LF-LS-P21 – Land use and fresh water	Amend	DairyNZ proposes some wording changes to simplify and improve the policy.	<p>Amend the policy as follows:</p> <p><u>Maintain, or if degraded, improve</u> Achieve the improvement or maintenance of fresh water quantity or quality to meet environmental outcomes set for Freshwater Management Units and/or rohe by:</p> <p>(1) reducing direct and indirect discharges of contaminants to <u>fresh</u> water from the use and development of land, and</p> <p>(2) managing land uses that may have adverse effects on the flow <u>quantity</u> of water in surface water bodies or the recharge of groundwater.</p>
LF-LS-M11 – Regional plans	Amend	DairyNZ proposes some wording changes to better reflect what needs to happen through the regional plan and that managing some activities will need support.	<p>Amend the method as follows:</p> <p>Otago Regional Council must publicly notify a Land and Water Regional Plan no later than 31</p>

			<p>December 2023 and then, when it is made operative, maintain that regional plan to:</p> <p>(1) manage land uses that may affect the ability of environmental outcomes for water quality to be achieved by <u>requiring</u>:</p> <p>(a) <u>supporting</u> the development and implementation of certified freshwater farm plans as required by the RMA and any regulations,</p> <p>(b) <u>supporting</u> the adoption of practices that reduce the risk of sediment and nutrient loss to water, including by minimising the area and duration of exposed soil, using buffers, and actively managing critical source areas,</p> <p>(c) <u>requiring effective</u> management of effluent storage and applications systems, and</p> <p>(d) <u>requiring</u> earthworks activities to implement effective sediment and erosion control practices and setbacks from water bodies to reduce the risk of sediment loss to water, and</p> <p>(2) provide for changes in land use that improve the sustainable and efficient allocation and use of fresh water, and</p> <p>(3) implement policies LF-LS-P16 to LF-LF-P22.</p>
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